

NEBRASKA ADMINISTRATIVE CODE

TITLE 247, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

**RULES AND REGULATIONS FOR COMMERCIAL DRIVER
TRAINING SCHOOLS AND INSTRUCTORS**

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TITLE 247 NEBRASKA DEPARTMENT OF MOTOR VEHICLES

Chapter 2

RULES AND REGULATIONS FOR COMMERCIAL DRIVER TRAINING SCHOOLS AND INSTRUCTORS.

PRIOR AMENDMENT DATE: November 6, 1996.

001 SCOPE. These rules and regulations apply to the following entities and individuals:

001.01 Any driver training school as defined in these rules and regulations, except those which teach a Department approved driver's safety course for a provisional operator's permit (that course is controlled by Title 247 NAC 11); and

001.02 Any driver training instructor as defined in the rules and regulations.

002 DEFINITIONS.

002.01 **Commercial driver training school** means a business enterprise conducted by an individual, association, partnership, limited liability company or corporation (for profit or non profit) which educates or trains persons to operate motor vehicles and which charges consideration or tuition for such service or materials.

002.02 **Contact person** means the authorized person designated to act on behalf of the school as the contact person with the Department.

002.03 **Department** means the Nebraska Department of Motor Vehicles.

002.04 **Director** means the Director of the Department of Motor Vehicles.

002.05 **Instructor** means any person who teaches, conducts classes, gives demonstrations or supervises practical training of persons learning to operate motor vehicles in connection with operation of a commercial driver training school.

002.06 **School representative** means an individual applicant, partner, associate, corporate director, officer or manager of a commercial driver training school or a public school superintendent or principal.

003 DRIVER TRAINING SCHOOLS.

003.01 Applicants for Driver Training School License. The Department shall not issue a driver training school license to any individual, partnership, educational institution, or college or university, association, or non profit corporation or corporation unless:

003.01A The applicant continuously maintains a place of business which includes at least one (1) permanent, regularly occupied structure within the State of Nebraska; and

003.01B The applicant has at least one (1) registered motor vehicle which has been equipped for driver training purposes.

003.02 Application Requirements for Driver Training Schools. Each original and renewal driver training school license application shall contain information consisting of:

003.02A Contact Person. The name, title, current address and telephone number of the school's contact person;

003.02B Instructors. The name, date of birth, driver's license number and home address of all instructors;

003.02C Motor Vehicles. A schedule of motor vehicles owned or leased;

003.02D Name. The name, address, telephone number of the driver training school;

003.02E Insurance. Valid insurance certificate or insurance policy detailing the coverage for all motor vehicles used in the course;

003.02F Signature. Signature of the school representative certifying that the information included in the application is true and accurate;

003.02G Owners. The names and addresses of all business owners; and

003.02H Other Information. Any other information deemed necessary by the Department.

003.03 Driver Training Motor Vehicles.

003.03A Registered. All motor vehicles used in driver training must be registered.

003.03B Insurance. All motor vehicles used in driver training will be covered by liability insurance in amounts not less than set forth in section 60-509. If the insurance is not renewed, the driver training school shall give written notice to the Department at least ten (10) days prior to the expiration date of the policy or coverage.

003.03C Dual Brakes. Except for trucks, motorcycles and motor vehicles being used pursuant to 003.03E of these rules and regulations, any motor vehicle used for driver training purposes shall be equipped with a dual braking device.

003.03D Identified as Driver School. Any motor vehicle being used for driver training shall be readily identified as a driver training motor vehicle.

003.03E Disabled Student Motor Vehicles. A student who requires adaptive equipment to operate a motor vehicle may use a personal motor vehicle during training. The driver training school shall obtain photocopies of the motor vehicle's registration and proof of insurance. No motor vehicle may be used without being registered and insured.

003.03F Non Profit Corporation Motor Vehicles. A non profit corporation is not required to own or register the motor vehicle used in driver training in its name, provided the motor vehicle conforms to the registration, insurance, and safety requirements set forth herein.

003.04 Classroom Facilities. The classroom must be able to accommodate students comfortably and to ensure proper safety, including:

003.04A Text books and reference books relating to the proper operation of motor vehicles and traffic laws;

003.04B Ample working and testing space for enrolled students and observers; and

003.04C Ready access to restrooms.

003.05 Driver Training School Courses of Instruction.

003.05A Hours. A minimum of six (6) hours of classroom instruction and six (6) hours of behind-the-wheel instruction must be given to each student.

003.05A1 Hospital Exemption. Rehabilitation hospitals which assess needs of disabled patients and train for those specific needs are exempt from the six-hour (6-hour) behind-

the-wheel and in the classroom requirements. They are expected to take whatever time is necessary to train the patient adequately.

003.05B **Monthly.** The offered classroom instruction must be available at least once each calendar month for students currently enrolled in the school and must include safe driving practices in the operation of motor vehicles.

003.05C **Behind the Wheel.** Behind-the-wheel instruction must consist of actual driving practice while the motor vehicle is in motion. Instruction given while the motor vehicle is parked cannot be recorded as behind-the-wheel instruction time.

003.05D **Simulator.** Up to one (1) hour of behind-the-wheel instruction may be replaced by use of a driving simulator at a proportion of four to one (4 to 1). (One (1) hour of simulated driving equals fifteen (15) minutes of behind-the-wheel drive time.)

003.05E **Driving Range.** Up to two (2) hours of behind-the-wheel instruction may be replaced by time on a closed course driving range at a proportion of two to one (2 to 1). Two (2) hours on a driving range equals one (1) hour behind the wheel.)

003.06 **School/Student Contracts.**

003.06A All written contracts or agreements by or between a driver training school and a student must contain the following:

003.06A1 A statement indicating that the student is to receive at least six (6) hours of classroom instruction and six (6) hours of behind-the-wheel instruction;

003.06A2 A statement indicating the agreed contract price per hour per lesson and terms of payment;

003.06A3 A statement indicating the specific time and date when instruction is to start; and

003.06A4 The driver's license or permit number held by the student.

003.06B Driver training school shall NOT include a statement in any of its contracts or advertising to the effect that a state license is guaranteed.

003.06C **Bond.** A driver training school will file a continuous Three Thousand Dollar (\$3,000.00) surety bond with the Department. It is for the protection of the contractual rights

of students, and must be written by a company authorized to do business in the State.

003.07 School Names. No driver training school shall adopt, use, or conduct any business under a name that is like or deceptively similar to a name used by another driver training school. The right to use a name claimed by another driver training school will be determined by the Department on the basis of the longest history of use.

003.08 Display Credentials. Each driver training school must display the state license in a prominent place.

003.09 Driver Training School Must Notify the Department of Changes.

003.09A Name Change. The school must notify the Department in writing of any change in the school's name, legal status or address in writing ten (10) days prior to its date of occurrence.

003.09B Instructor Changes. The school must notify the Department in writing of any addition or deletion of approved instructors or changes in their driving statuses within ten (10) days of date of occurrence.

003.09C School Closes. If the school ceases operation in Nebraska, the school shall notify the Department in writing ten (10) days prior to its date of occurrence.

003.09D Insurance Change. If the school's insurance as required by the rules and regulations is canceled or altered by the insurance company, the school shall notify the Department in writing within ten (10) working days of its date of occurrence.

003.10 Inspection of School Facilities.

003.10A Random Inspections. The Department may conduct random inspections of all of the school's facilities and motor vehicles. The school shall exhibit all records, instructional aids and other objects which are necessary to the Department's investigation.

003.10B Written Evaluation. The Department may, at the Department's discretion, prepare a written report of the results of each inspection or examination. A copy of the report may be provided to the school.

003.11 Termination of Driver Training School Licenses. When a driver training school ceases to carry on the business of giving instructions for hire or, if upon reasonable investigation, it

appears the school has ceased to do business, the license of such school shall be terminated and the license returned to the Department.

004 **REQUIREMENTS FOR DRIVER TRAINING INSTRUCTOR'S LICENSE.**

004.01 **Requirements for Applicant for Driver Training Instructor's License.** A driver training applicant will:

004.01A **Valid License.** Have held a valid license from his state of residence for a period of at least two (2) consecutive years immediately preceding the date of application. Licensing lapses due to failure to renew before a license's expiration date shall not be cause for denial. The license must be representative of the motor vehicle class taught (i.e., CDL license for CDL training);

004.01B **High School Diploma.** Have a high school diploma or its equivalent;

004.01C **Clean Driving Record.** The instructor must have no violation noted on his or her driving record for which five (5) or more points might be assessed as set out in Neb.Rev.Stat. § 60-4,182 for the prior five (5) years. This includes probation or other situations in which no points were actually assessed for the violation. Additionally, the instructor must have no suspensions or revocations on his or her driving record within the last five (5) years, including no convictions for DWI or any related alcohol or drug offense in connection with motor vehicle use; and

004.01D Is of good moral character and is at least twenty one (21) years.

004.02 **Application Requirements for Driver Training Instructors.**

004.02A Applications to be licensed as a driver training instructor must be made upon a form furnished by the Department every year.

004.02B Each instructor's license application must indicate the name of the licensed driver training school with which applicant is employed or is associated and all applications must be signed by an authorized agent of the driver training school.

004.02C Each driver training instructor's license application must be signed by the applicant.

004.03 The Department will notify instructors when they have been approved.

004.04 **Agent.** For purposes of these rules and regulations, each instructor employed by or associated with any school shall be deemed an agent of the school and the school shall share responsibility for all acts performed by the instructor which are within the scope of his or her employment, and which occur during the course of his or her employment.

005 **FEES.**

005.01 **Expiration.** All licenses will expire on the last day of June in the year following issuance and may be renewed upon application to the Department.

005.02 **Fee.** Each application for a new or renewal school license shall be accompanied by a fee of fifty dollars (\$50.00). Each application for a new or renewal instructor's license shall be accompanied by a fee of ten dollars (\$10.00). No license fee shall be refunded in the event that the license is rejected, suspended, or revoked.

006 **DENIAL, REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF DRIVER TRAINING SCHOOL AND DRIVER TRAINING INSTRUCTOR LICENSES.** The Department will deny, refuse to renew, suspend or revoke the license of any driver training school or instructor, for any of the following reasons:

006.01 Failure to provide notice to the Department as required by 003.10;

006.02 Failure to permit on-site inspections or audits as required by 003.11;

006.03 Failure to pay the fee as required by 005.02;

006.04 Failure at any time to comply with the Motor Vehicle Operator's License Act or the rules and regulations adopted and promulgated by the Department under that Act;

006.05 Lack of business stability;

006.06 Fraud, forgery or falsification of any documents relating to the schools or their instructors;

006.07 Employing an instructor who has a conviction for driving a motor vehicle under the influence within the previous five (5) years of the date of application;

006.08 Employing an instructor who has a suspended or revoked driver's license within the

previous five (5) years of the date of application, or who has a five (5) point or more driving violation;

006.09 Fraud, forgery or misrepresentation in an application; or

006.10 Failure to teach to the student the proper operation of the appropriate motor vehicle.

007 **APPEAL.**

007.01 **Hearing.** Upon suspension, revocation, cancellation or denial of the issuance of a instructor or school license, the Director shall notify the school in writing and, upon written request, shall afford the school a hearing.

007.02 **Stay.** Upon receipt of a written request, the Director may stay the administrative order pending an administrative hearing on the matter.

007.03 **Administrative Procedure Act.** Any action taken by the Department to cancel, suspend, revoke or refuse to issue or renew a license shall comply with the Administrative Procedure Act.

008 **HEARINGS; PROCEDURE AND NOTICE.**

008.01 **Notice.** Whenever the Department denies an initial application for, refuses renewal of, or suspends or revokes a license, the Department shall notify the party of its intent in the following manner:

008.01A Written notice shall be sent by certified mail, return receipt requested, to the party's last-known address;

008.01B Notice shall state that the party may request a formal hearing by submitting a written request for formal hearing with the Department within thirty (30) days of the issuance of the notice.

008.02 **Notice of Hearing.** Upon receipt of a written request for a hearing, the Director shall set a hearing date at a time and location designated by the Director, and notify the party. Written notice shall be sent by certified mail, return receipt requested, to the party's last known address at least fifteen (15) days prior to the hearing.

008.03 Parties to a Hearing. The parties to a hearing shall be the Department and the person or entity notified of impending denial, refusal of renewal, suspension or revocation.

008.04 Hearing Officer. The hearing shall be conducted by the Director or his or her designated hearing officer, who will, inter alia, open the proceedings; enter into the record the notice of hearing; rule on the admissibility of exhibits, take appearances, act on pleadings not previously filed; hear evidence, rule on motions and objections, issue subpoenas, order briefs; cross-examine any witnesses and close the proceedings. Hearing officers make a recommendation to the Director.

008.05 Continuances. Continuances may be granted at the discretion of the Director for good cause or on his or her own motion. The party shall notify the Director in writing, stating in detail the reasons why such continuance is necessary. The requests must be received by the Department no later than five (5) days prior to hearing.

008.06 Official Record. The Department shall prepare an official record in all hearings in the form of a tape recording by the Director or the designated hearing officer.

008.07 Decisions -- Transmittal. The Director shall reduce his or her order to writing and deliver that order to the parties by certified mail, return receipt requested.

008.08 Representation by Counsel. Either party may be represented at the hearing by counsel.

008.09 Summary Suspension. The Department may summarily revoke or suspend the certificate of a commercial driving school or instructor provided that the Department finds that the public safety requires emergency action and incorporates its findings to that effect in its notice of suspension or revocation of certificate. The party may request a hearing within thirty (30) calendar days of the date of notice. If so requested, the hearing shall be instituted within ten (10) calendar days of the request, and the contest of the summary revocation/suspension shall be promptly determined.

009 INTERVENTION.

009.01 Petitions for Intervention. Petitions for intervention must:

009.01A Be in a legible form showing the caption, "Before the Director of the Department of Motor Vehicles," and entitled as "Petition for Intervention."

009.01B Specify inventor's legal rights, duties, privileges, immunities, or other legal interests

justifying their participation in any proceeding in which intervention is sought.

009.01C State the names of the interested parties likely to be affected by the intervenor's petition.

009.01D State sufficient facts upon which the Director or hearing officer can rely to render a well-reasoned decision.

009.01E Be subscribed by the intervenor or by a duly authorized officer of the intervenor, if the intervenor is a corporation, organization, other legal entity, or the attorney for the intervenor. The petition must include the attorney's name, bar number, address and telephone number.

009.01F **Filing Petition.** The petition must ordinarily be filed with the Department, with copies of the petition for intervention received by all parties named in the notice of hearing, at least five (5) days before a hearing.

009.01G **Consideration of a Petition.** Petitions for intervention will ordinarily be considered solely on the face of the petition and without hearing.

009.01H **Granting Intervention.** The Director or hearing officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

009.02 **Conditions and Privileges of Intervention.** When granting a petition for intervention, the Director or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time intervention is allowed, or at any subsequent time. Conditions may include:

009.02A Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

009.02B Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings;

009.02C Requiring two (2) or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in a proceeding.

009.03 **Orders.** The Director or hearing officer shall issue an order granting or denying each

pending petition for intervention at least twenty-four (24) hours before a hearing. The order shall specify any conditions imposed on the intervenor's participation, and shall state the reasons for the decision.

009.03A **Modification of Orders.** The Director or hearing officer may modify an order granting or denying a petition for intervention at any time, and the order of modification shall state the reasons for modification.

010 **EVIDENCE.**

010.01 **What Evidence Admissible.** Any evidence shall be deemed admissible in a hearing which would be admissible in civil proceedings under the laws of the State of Nebraska. In addition, the hearing officer may, within his or her discretion, admit evidence possessing probative value in any form commonly accepted by reasonably prudent men in the conduct of their affairs.

010.01A **Incompetent or Irrelevant Evidence; Exceptions.** Incompetent, irrelevant or immaterial evidence may be excluded. Where proper objection is made to the admission of any evidence, the party making the objection shall be deemed to have taken exception to any adverse ruling and formal exceptions are not necessary.

010.02 **Records of the Department.** Records and documents in the possession of the Department may be received in evidence in the form in which the same are kept, and without certification. The records and documents shall be afforded in evidence and made a part of the record in the case.

010.03 **Cross Examination.** Each party shall have a right of cross-examination of all witnesses who testify.

010.04 **Official Notice.** In the conduct of a hearing, the hearing officer may take official notice of such facts as would be so noticed by the district courts of Nebraska, and may take notice of general technical or scientific facts within the specialized knowledge of the Department.

010.05 **Rules of Evidence.** Any party to a formal hearing before the Director may request that the rules of evidence apply at least three (3) days prior to the hearing. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby, including the costs of court reporting services.

011 **DECISIONS AND FINAL ORDERS.**

011.01 **Written Order Required, Contents.** Where a decision or order is rendered by the Director in the course of any proceedings adverse to any party, the order shall be in writing or set forth in the record, and accompanied by findings of fact and conclusions of law.

011.02 **Copies of Order.** Copies of the decision and order and findings of fact and conclusions of law shall be delivered upon request to any party or his or her attorney of record. If the order requires revocation of a certificate, it will set forth the period of revocation or suspension and require that the certificate be returned to the Director.